

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARK MAHAFFEY,

Plaintiff,

v.

Case No. 13-14646

JOSHUA BUSKIRK,
FRANCES HINSLEY, JEFFREY
STIEVE, JACOB, SHARP,
HARRIET SQUIER, and
HARESH B. PANDYA,

Defendants.

HONORABLE AVERN COHN

**ORDER
ADOPTING REPORT AND RECOMMENDATION (Doc. 76)
AND
GRANTING JOSHUA BUSKIRK AND HARRIET SQUIRE'S MOTION FOR SUMMARY
JUDGMENT (Doc. 63)
AND
DISMISSING JACOB AND FRANCES HINSLEY WITHOUT PREJUDICE**

I.

This is a pro se prisoner civil rights case. Plaintiff is a former inmate of the Michigan Department of Corrections (MDOC).¹ He asserts a claim under 42 U.S.C. § 1983 against defendants claiming a violation of his Eighth Amendment rights due to inadequate medical care for the treatment of a back condition. The matter has been referred to a magistrate judge for all pretrial proceedings. (Doc. 24).

¹A search of Michigan's offender tracking systems shows that plaintiff was discharged in January of 2015. Plaintiff has also filed a change of address, indicating he now resides in Florida. See Doc. 69.

Plaintiff initially named eleven (11) defendants. Following motion practice, the remaining defendants are: Joshua Buskirk, Harriet Squier, Frances Hinsley, Sharp and Jacob.

Buskirk and Squier filed a motion for summary judgment. (Doc 63). On March 30, 2015, the magistrate judge issued a report and recommendation, recommending that the motion be granted. (Doc. 76).

II.

Neither party has filed objections to the MJRR and the time for filing objections has passed. The failure to file objections to the report and recommendation waives any further right to appeal. Smith v. Detroit Federation of Teachers Local 231, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the motions. Thomas v. Arn, 474 U.S. 140, 149 (1985).

However, the Court has reviewed the MJRR and agrees with the magistrate judge's analysis and recommendations. As the magistrate judge fully explained, plaintiff has not made out a viable Eighth Amendment claim against either Buskirk or Squier.

III.

Accordingly, the findings and conclusions of the magistrate judge are ADOPTED as the findings and conclusions of the Court. Buskirk and Squire's motion for summary judgment is GRANTED.

Defendants Sharp, Jacob and Hinsley remain. As to Sharp, counsel for Sharp recently filed an appearance on his behalf (Doc. 77). Sharp has also filed a motion to dismiss (Doc. 78) which is pending before the magistrate judge. As to Jacob, the

MDOC has said that it does not employ him. See Doc. 41. As to Hinsley, service was attempted but not successful. See Doc. 13. Under these circumstances, Jacob and Hinsley they are DISMISSED WITHOUT PREJUDICE. See Fed. R. Civ. P. 4(m); Fed. R. Civ. P. 41(b); Link v. Wabash R.R. Co., 370 U.S. 626 (1961); Carter v. City of Memphis, Tennessee, 636 F.2d 159, 161 (6th Cir.1980).

The case continues only as to Sharp.

SO ORDERED.

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: April 22, 2015
Detroit, MI

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, April 22, 2015, by electronic and/or ordinary mail.

S/Sakne Chami
Case Manager, (313) 234-5160